

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

Yaodi Hu)		
plaintiff)	jury demand	
v.)		
Village of Maywood)	Judge Dow	Magistrate Key
Robinson Towing)	07 cv 7203	

Response to Maywood's Motion to Dismiss Under Rule 8

1. Village of Maywood complained that Hu did not obtain leave of Court when he filed his First Amended Complaint. (¶ 6 of April 3, 2008 Motion)
2. The Seventh Circuit in *La Batt v. Twomey*, 513 F.2d 641, 650-651 (7th Cir. 1975) held that "In this circuit, a motion to dismiss does not constitute such a responsive pleading. *Fuhrer v. Fuhrer*, 292 F.2d 140 (7th Cir. 1961); *Thomas v. Pate*, supra, 493 F.2d at 162. Similarly, the weight of authority indicates that a motion for summary judgment is not a responsive pleading. *Rogers v. Girard Trust co.*, 159 F.2d 239, 241 (6th Cir. 1947); 3 Moore, Federal Practice, P15.07 (2). Accordingly, plaintiffs had the right to amend their pleading without leave," *id* at 651.
3. Plaintiff Hu has the absolute right under the Rule 15 amend his complaint as a matter of course. *Anderson v. USAA Cas. Inc. Co.* (2003, DC Dist Col) 218 FRD 307.
4. Defendant Maywood's reliance on *United States v. Lockheed-Martin Corporation* 328 F.3d 374 (7th Cir. 2003) is misplaced. That case, after a lengthy four years, and fourth amended complaint, plaintiff failed to make a single fraud claim specific enough of "the who, what, when, where and how" complying with Rule 9 (b) within its 155 pages of complaint and 99 attachments. The Court was unwilling to navigate through these papers to possibly find a few specific fraud. Plaintiff's appellate brief does not extract from the pleadings a single instance of a false statement made to obtain payment. Plaintiff simply failed to state a claim. *id* at 377.
5. Defendant Maywood complained that a 27 pages Complaint made it too long to be unintelligible. That is sheer absurdity. Defendant Maywood's Motion is frivolous.
6. Plaintiff Hu respectfully pray this Court denying Maywood's Motion.

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